

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES FOR THE USE AND)
BENEFIT OF J BLUE TRUCKING, INC.,)
and J BLUE TRUCKING, INC.,)
a Missouri Corporation,)
)
Plaintiffs,)
)
v.) Case No. 1:14CV96 SNLJ
)
HARDING ENTERPRISES, LLC, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on defendant Young's General Contracting, Inc.'s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant alleges plaintiffs' complaint fails to state a claim against it because each of the four counts in the complaint requests a remedy solely from defendant Harding Enterprises, LLC. Specifically, the four counts contain the following prayer for relief: "WHEREFORE, plaintiff requests the Court for judgment in their favor and against defendant Harding Enterprises, LLC for . . ." In response to the motion, plaintiffs filed a first amended complaint. The amended complaint requests a remedy from defendant Young's General Contracting, Inc. in two of the four counts.

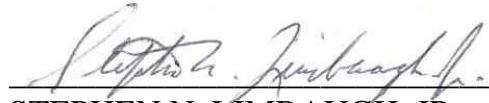
Rule 15(a)(1)(B) allows a party to “amend its pleading once as a matter of course . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),

whichever is earlier.” Defendant filed its motion to dismiss on July 17, 2014. Co-defendant Harding Enterprises, LLC filed its answer on July 21, 2014. Plaintiffs filed their amended complaint on July 24, 2014. Plaintiffs’ amended complaint is properly filed pursuant to Rule 15(a)(1)(B) and renders the motion to dismiss moot.

Accordingly,

IT IS HEREBY ORDERED that defendant Young’s General Contracting, Inc.’s motion to dismiss (ECF #7) is **DENIED** as moot.

Dated this 28th day of July, 2014.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE